APPEAL NO. 010395

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 30, 2001. After two issues were withdrawn without prejudice by mutual agreement of the parties, the hearing officer was left with the following issue:

> Is there a disqualifying association between the designated doctor [DD], [Dr. G], and the Carrier's required medical examination [RME] doctor, [Dr. T]?

The hearing officer determined that "The use by [Dr. G] and [Dr. T] of the same office and shared equipment as well as clerical support, although at different times, created a reasonable perception that [Dr. T] had the potential to influence the conduct or decision of [Dr. G]." The hearing officer concluded that Dr. G is disqualified to serve as DD in this claim and ordered the appointment of a second DD. The appellant (self-insured) appeals the decision of the hearing officer. The respondent (claimant) did not submit a response to the appeal.

DECISION

Affirmed, with Finding of Fact No. 4 reformed to correct a misstatement of the evidence.

The self-insured points out an error in the hearing officer's Finding of Fact No. 4. The hearing officer found that "On February 5, 1999, and January 20, 2000, [Dr. G] examined the Claimant as designated doctor at a [Clinic]." The evidence and testimony was clear that the second DD examination took place at the MES clinic rather than at the Clinic. The self-insured incorrectly sets the date of the second DD examination as January 27, 2000; the report of this examination is dated January 27, 2000, but the correct date of the examination itself was January 20, 2000. Finding of Fact No. 4 is reformed to read: "On February 5, 1999, [Dr. G] examined the claimant as designated doctor at a [Clinic]. On January 20, 2000, [Dr. G] again examined the claimant as designated doctor; this examination was performed at the [MES clinic.]"

The hearing officer's misperception of the evidence noted above, however, does not affect our decision in this case. The hearing officer correctly applied Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.10(a)(4) (Rule 126.10(a)(4)) and our precedents to the facts of this case. *See* Texas Workers' Compensation Commission Appeal No. 980480, decided April 22, 1998, and cases cited therein. The claimant properly questioned the use of the same facilities and staff for successive examinations by the DD and the RME doctor, raising her concerns to Texas Workers' Compensation Commission (Commission) employees on approximately 20 occasions, as reflected in the Dispute Resolution Information System notes that were admitted as Carrier's Exhibit No. 9. The claimant especially noted that large portions of the first DD report and the RME report were identical in content and she perceived that this worked to her detriment. As we said in Appeal No.

980480, *supra*: "It is apparent from the use of the reasonable perception language in Rule 126.10(a)(4) that it was the intent of the Commission to ensure not only an impartial examination by the designated doctor but also to preserve the appearance of an impartial examination." The hearing officer did not err in determining that the appointment of Dr. G as the DD was improper because of the reasonably perceived disqualifying association between Dr. T and Dr. G. In light of that determination, the hearing officer properly determined that a second DD should be appointed in this case.

Finding of Fact No. 4 is reformed as noted above and the hearing officer's decision and order are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge